

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Creation of a Low Power)	RM-11287
Radio Service – on the)	
AM Broadcast Band)	
)	

To the Commission:

Reply Comments of Nickolaus E. Leggett

I am one of the petitioners in this docket (RM-11287). These comments are in reply to the comments by REC Networks on the auctioning of licenses for the proposed Low Power AM (LPAM) radio service.

REC Networks presents the congressionally mandated license auctions as a barrier to the proposed commercial LPAM radio service.

However, both the Commission and REC Networks should consider the possibility that the legislated license auctions are unconstitutional. In America, large organizations, small organizations, and individuals can all participate equally in the rights and opportunities provided by the society.

For example, the listed items below are available for all:

1. Ownership of real estate and other property
2. Ownership and operation of land, water, and air vehicles
3. Creation, publication, and distribution of printed, audio, and video material

4. Participation in and operation of organizations, associations, businesses, and corporations
5. Invention, development, and patenting of new devices and technology

We would be quite surprised if Federal law limited aircraft operation to large corporations or limited the right to publish to organizations of a certain size range. So why should things be any different in the world of broadcasting?

Radio license auctions limit the ownership of broadcast stations to quite wealthy corporations with all other Americans left out. This is an unavoidable consequence of the auction process that awards the license to the highest bidder. In the case of a LPAM radio service subject to auctions, the licenses would be worth less than full power station licenses. Despite this, the auction process would still award the LPAM licenses to the wealthiest organizations competing for the licenses.

This consistent bias towards the rich is not acceptable and may violate the equal protection of the law guaranteed by the United States Constitution.

Many observers of broadcasting state that broadcasting is different because the limited broadcast spectrum is rationed by the auctioning of licenses. However, the fact that something is rationed does not justify it being limited to the wealthiest people and organizations. For example, if

there is a shortage of vaccine we do not limit it to the wealthy by the force of law. Similarly, in a fuel shortage we do not restrict gasoline or heating oil sales to high income citizens. Nor do we have auctions of drivers' licenses.

There are alternative mechanisms for allocating scarce spectrum without having the intense class bias of the license auctions. One of these mechanisms is the lottery where each applicant for a license has an equal chance to win the license. Another alternative is the opening of new radio spectrum such as the millimeter waves by technological progress. The existence of alternatives to license auctions encourages a loss of legitimacy by an allocation process that is needlessly biased in favor of the richest elements of society.

Clearly, we are not going to settle the issue of the Constitutionality of radio license auctions in this single FCC docket. However, we must be aware that sooner or later the auctions will be effectively challenged in court. Indeed, if I could afford the several hundred thousand dollars needed to challenge the auctions up through the U.S. Supreme Court I would do so. However, that is not my situation. But the auctions will be challenged, or the basic American legitimacy will slowly fade away with unpleasant and undesirable political and social consequences.

The Commission should seriously examine the possibility of a commercial LPAM radio service operating without license auctions. If the Commission determines that such a free LPAM is not possible, then it can

turn to a LPAM service based on non-profit operation. However, even in that situation there is no reason to exclude individuals from ownership and operation of LPAM stations. Why am I as an individual less fit than a non-profit organization to operate an LPAM radio station?

Respectfully submitted,

**Nickolaus E. Leggett, N3NL
Amateur Radio Extra Class Licensee
1432 Northgate Square, Apt. 2A
Reston, VA 20190-3748
(703) 709-0752**

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A paper copy of this reply comment has been sent by U.S. Postal Service First Class Mail to REC Networks at the address below:

Mr. Rich Eyre
REC Networks
P. O. Box 40816
Mesa, AZ 85274-0816